

REMARKS

The Official Action of May 5, 2008 and the references cited therein have been carefully considered. The amendments and remarks herein are considered to be responsive thereto. Claims 1-12 have been canceled without canceling the subject matter thereof. New claims 13 through 23 have been added. No new matter has been added.

The Examiner states that Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 USC 119(e) because the disclosure in USSN 60/424,790 and USSN 60/500,094 do not have support for when the variables R4 and R5 are SOqC1-6 alkyl, COC1-6 alkyl and OCF3 as in the instant application. The Examiner further states that 8th compound in Table 1 and the first compound on page 74, of claim 4 are not found in either of the prior applications. Applicant's respectfully submit that the claims of the instant application are fully supported by the disclosures of USSN 60/424,790, USSN 60/500,094 and PCT/US03/34959. Thus, the priority claim is proper.

Claims 1-4 and 9-12 are objected to as containing non-elected subject matter. New claims 13-23 are directed to the elected invention.

Claims 1, 3, 4 and 9-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5, 6 and 11-14 of co-pending application No. 11/630172. The Examiner states that claims 1-3 and 5 of US/630172 overlap with the claimed compounds. Applicants respectfully traverse on 2 grounds. First, USSN 11/630172 is not a patent. Second, the compounds of USSN 11/630172 must always have at least one phosphate substituent attached to the molecule.

Thus, there is no overlap between the claimed compounds and those of USSN 11/630172. Accordingly, this reference does not qualify as a reference for purposes of obviousness-type double patenting.

Respectfully submitted,

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